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of damages was the difference between the actual value of the hemp when it arrived, and what would have been the value if shipped in a suitable state. And see *Voorhees v. Earle*, 2 Hill (N. Y.), 288 (38 Am. Dec. 588); *Cary v. Gruman*, 4 Hill (N. Y.) 625 (40 Am. Dec. 290, and note); *Eastern Ice Co. v. King*, 86 Va. 97; Sedgwick, Measure of Damages, 344; Hare on Contracts, pp. 566-7.

In Hare on Contracts, p. 567, the rule is stated as above laid down, and is thus illustrated: "If, for instance, a horse warranted sound, and that would be worth \$200 if the warranty were true, is sold for \$400, and labors under a defect or unsoundness that reduces its value by one half [*i. e.*, to \$100], the purchaser can recover only \$100, and must bear the remaining loss, which is due to his having paid \$200 more than the horse was worth [*i. e.*, even if he had been sound]. So, if a bale of cotton, sold for \$800 and warranted sound, but which would be worth only \$400 if the warranty were true, proves rotten, and will not sell for enough to cover costs and charges, the damages are \$400, and the vendor may sue for and recover the rest of the purchase money; as to which there is no defense. Conversely, the purchaser is not less entitled to damages because he is a gainer by the sale; and a man who gives \$300 for a lame horse on the faith of a warranty, and which is worth that sum, notwithstanding the defect, may recover \$300 on proof that the horse would sell for \$600 if it were sound, and thus in effect get the animal for nothing."

LIABILITY OF CORPORATIONS FOR PUNITIVE DAMAGES, OR "SMART MONEY."

Where due care has been exercised in the selection of his agent, an innocent principal is ordinarily not held liable beyond compensatory damages for the wrongful act of his agent, though the circumstances be such as to call for punitive damages against the actual perpetrator of the wrong. This is based upon the absence of evil intent on the part of the principal.

As corporations can act only through their agents, this doctrine would practically relieve them altogether from liability for exemplary damages. Many of the courts accept this logical conclusion, and hold corporations thus exempt—howsoever malicious, wrongful, fraudulent, wanton, reckless or oppressive the act of the agent may have been—save where the corporation previously authorizes or subsequently ratifies the act, or is otherwise in default in selecting the agent, or in retaining him after knowledge of his unfitness. A collection of the cases maintaining the latter doctrine will be found in the authorities following: *Ricketts v. C. & O. R. Co.* (W. Va.) 25 Am. St. Rep. 901 and note; *Cleghorn v. N. Y. etc. R. Co.* (N. Y.) 15 Am. Rep. 375.

The rule last mentioned is a well-established doctrine of the Federal courts. The Supreme Court of the United States maintains that the question is not one of local law, but of general jurisprudence, upon which the Federal courts will exercise their own judgment untrammelled by State decisions; and that in no case can a corporation be held liable in the Federal courts for punitive damages, unless it participated in the wrong, expressly or impliedly, by authorizing or approving it, either before or after its commission. The leading case in that court is one which arose out of the expulsion of a passenger from a railroad train, and in which it was held that in the absence of default on the part of the corporation, compensatory damages alone could be recovered. *Lake Shore etc. R. Co. v. Prentice*,

147 U. S. 101; reported, with extensive notes in Book 37 of the Lawy. Co-Op. Ed. p. 97. See also *Pittsburg etc. R. Co. v. Russ*, 57 Fed. Rep. 822 (6 C. C. A. 597).

But the weight of authority in the State courts is opposed to this view, and in these courts it is very generally held that a corporation is liable in punitive damages for the malicious and wanton wrongs of its servants, done in the course of their employment, though neither authorized nor ratified. This liability has been recognized in actions by passengers against railroad companies more frequently than in any other class of cases. Indeed, it is asserted by Mr. Freeman, in the note to *Spellman v. R. & D. R. Co.* cited below, that such liability has been upheld in nearly every instance in the latter class of cases.

The subject is discussed in a learned and exhaustive note to *Spellman v. R. & D. R. Co.* (So. Car.) 28 Am. St. Rep. 858, 770-883, where the authorities *pro* and *con* are collected. See further on the subject, Shearm. & Redf. on Neg. (4th ed.), sec. 749; 1 Harris Dam. by Corp. 9249; Sutherland on Dam. 750.

On the subject of punitive damages generally, see note to *Merrill v. Tariff Manuf. Co.* (Conn.), 27 Am. Dec. 682, 684-689; and note to *Austin v. Wilson* (Mass.), 50 Am. Dec. 766, 767-775; *Borland v. Barrett*, 76 Va. 128.

In *N. & W. R. Co. v. Anderson*, 90 Va. 1, a railroad company was held liable in punitive damages to a passenger, wrongfully ejected by the conductor, but on the ground that the company subsequently ratified the conductor's act. In *Lipscomb v. N. & W. R. Co.* 90 Va. 137, the court, after finding that the case was not a proper one for punitive damages at all (there being no ingredients of malice or fraud or of intentional wrong—p. 142) adopts in a *dictum* (p. 146), and without noticing the decisions to the contrary, the rule of the Supreme Court of the United States on the subject. In *N. & W. R. Co. v. Neely*, 1 Va. Law Reg. 277, the court said that an instruction that punitive damages might be recovered "if the act was wanton and oppressive, and if the company, after knowledge thereof, participated in it or ratified it, expressly or by implication," correctly propounded an abstract principle of law, but that there was no evidence upon which to base such an instruction—the wrong complained of being the result of an innocent mistake. There was no discussion of the principle, and no citation of authority.

The law on this subject cannot be said, therefore, to be settled in Virginia. The *dicta* in the two cases last cited seem to show a leaning of the Virginia court towards the Supreme Court rule, but nothing else.

GUARDIANS AD LITEM—*Admission by—consent proceedings.* It is well settled that no admission by the guardian *ad litem*, whether of record or otherwise, is binding on the infant defendant. Nor can there be a consent decree, or waiver of proofs, or the concession of any right of the infant by the guardian *ad litem*. *Dangerfield v. Smith*, 83 Va. 81, 91; *Waterman v. Lawrence* (Cal.), 79 Am. Dec. 212.

But this principle does not preclude the right of the guardian *ad litem* to consent to mere matters of procedure, for the sake of convenience, not affecting the substantive rights of the infant—as, for example, consenting to trial in vacation, or to a continuance of the cause, etc. *Morris v. Va. Ins. Co.*, 85 Va. 588, 593-4; *Kingsbury v. Buckner*, 134 U. S. 678, 681.